

Punishing Public Service: How the New PSLF Rule Endangers Legal Aid and Other Safety-Net Services

By: William Olson

On October 31, 2025, the United States Department of Education (ED) passed a new rule altering the Public Service Loan Forgiveness (PSLF) program that allows the Secretary of the Department to find employers ineligible for PSLF if the Secretary makes a determination that the employer is engaged in “substantial illegal activities.”¹ Shortly thereafter, on November 3, 2025, Minnesota joined 20 other states and the District of Columbia in a lawsuit challenging the legality of the new rule, arguing the broad definition of “substantial illegal activities” is “arbitrary and capricious” due to its capacity for arbitrary enforcement.² While the Trump administration’s attack on PSLF is not surprising, as he previously attempted to repeal the program, if the new rule is upheld, the consequences would seriously reduce access to critical services in already underserved communities.³ This situation is further complicated by recent changes to the standards of deference to agencies, and this lawsuit adds to the growing list of constitutional challenges to the Trump administration’s policies.⁴ There are various legal questions raised by the new ED rule, and its implementation will result in negative consequences. Those who are challenging the rule hope to avoid adverse outcomes by demonstrating that the rule is unlawfully arbitrary.⁵

¹ *Attorney General Ellison Sues Trump Administration to Block Illegal Favoritism*, OFF. MINN. ATT’Y GEN. (Nov. 3, 2025), https://www.ag.state.mn.us/Office/Communications/2025/11/03_PSLF.asp.

² *Id.*

³ See, e.g., Annie Nova, *Trump’s Budget Would End Student Loan Forgiveness Program*, CNBC (Feb. 12, 2018), <https://www.cnbc.com/2018/02/12/trumps-budget-would-end-student-loan-forgiveness-program.html> (showing Trump’s previous attempt to repeal PSLF); see also, *How PSLF Works: A Lifeline for Legal Professionals in Public Service*, ABA (Aug. 25, 2025), https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/legaleducation/pslf_homepage/how-pslf-works (demonstrating ABA concerns of growing legal deserts caused by the new rule).

⁴ Michael R Blumenthal et. al, *The End of Chevron Deference: What Does It Mean and What Comes Next?*, ABA: Bus. L.Today (Aug. 16, 2024), https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-august/end-chevron-deference-what-does-it-mean-what-comes-next/; *Litigation Tracker: Legal Challenges to Trump Administration Actions*, JUST SECURITY (Nov. 10, 2025), <https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/> (showing list of legal challenges against the Trump administration).

⁵ *Lawsuit Challenges the Department of Education Over New Public Service Loan Forgiveness Rule*, Am. Immigr. Council (Nov. 5, 2025), <https://www.americanimmigrationcouncil.org/press-release/lawsuit-challenges-department-education-public-loan-forgiveness-rule/>.

The PSLF program was passed in 2007, under the Bush administration, in response to increases in student loan debt.⁶ The program was created to allow employees of public service jobs, such as legal aid workers and state or federal government employees, to have their debt forgiven after making 120 consecutive monthly loan payments while working for a qualifying employer.⁷ While PSLF is certainly not a perfect program and has been subject to legal challenges alleging inconsistent application and lack of clarity in the program's rules, ED's proposed rule does not address these prior issues.⁸ Instead, the new rule creates an eligibility exception for employers engaged in "substantial illegal activities" and gives the Secretary of ED the authority to determine which employers are ineligible due to said activities.⁹ Specifically, the Secretary must determine "by a preponderance of evidence... after notice and opportunity to respond" if the employer has engaged in "substantial illegal activity" including "aiding or abetting" violations of federal immigration law, "[e]gaging in the chemical and surgical castration or mutilation of children in violation of Federal or State law[,]" and "[e]ngaging in a pattern of aiding and abetting illegal discrimination[.]"¹⁰

While this rule can appear neutral on its face, those challenging it argue that the law is, instead, an attempt to use vague definitions to target specific states.¹¹ The complaint in the suit, *Massachusetts v. Department of Education (Massachusetts)*, alleges that the finalized rule creates a variety of vague and conflicting definitions, such as applying "aiding and abetting," a criminal standard, to federal anti-discrimination law, which is wholly civil, and the definitions provided for genital "mutilation" seem to include gender-affirming care, which is not illegal under federal law.¹² Further, the complaint alleges that ED lacks the delegated authority to make exceptions to the definition of "full-time job[s] in... government" as written into the act by Congress.¹³ The complaint alleges that the ambiguity of the key definitions of the new rule and the overreach of delegated authority render the final rule in violation of the Administrative Procedure Act.¹⁴ Although it is still unknown how the courts will rule on this case, the complaint presents a compelling argument for finding the rule "arbitrary and capricious," especially in a post-*Loper Bright* world. While *Chevron* deference likely would not have applied in this case, as the question of whether ED is acting within its delegated authority is central to *Massachusetts*, the analytical

⁶ *A Brief History of Public Service Loan Forgiveness*, NAVIGATE (Jul. 8, 2021), <https://www.navigatestudentloans.com/post/a-brief-history-of-public-service-loan-forgiveness>.

⁷ College Cost Reduction and Access Act, Pub. L. 110-84, tit. IV, 121 Stat. 784, 800 (2007) (codified as amended at 34 C.F.R. § 685.219).

⁸ Allison Maldonado et al., *Public Service Loan Forgiveness: A Historical Overview and Practical Implications for Higher Education Practitioners*, 30 ESSAYS IN EDUC. 1, 2 (2024).

⁹ Cory Turner, *Public workers could be denied loan forgiveness if cities defy trump, lawsuit alleges*, NPR (Nov. 3, 2025), <https://www.npr.org/2025/11/03/nx-s1-5591157/trump-pslf-teachers-loan-forgiveness>.

¹⁰ William D. Ford Federal Direct Loan, 90 Fed. Reg. 48966, 49002 (Oct. 31, 2025) (amending 34 C.F.R. § 685.219).

¹¹ *Attorney General Ellison Sues Trump Administration to Block Illegal Favoritism*, *supra* note 1.

¹² Compl. ¶¶ 88–115, *Massachusetts v. U.S. Dep't of Educ.*, No. 1:25-cv-13244 (D. Mass. filed Nov. 3, 2025).

¹³ *Id.* ¶¶ 66–80.

¹⁴ *Id.* ¶¶ 154–176.

framework from *Loper Bright* strongly suggests that the court will apply their own interpretation of the language in question even if they find ED to be acting within its delegated authority.¹⁵

Courts finding the final rule to be constitutional seems even less likely when considering the additional constitutional challenges that the implementation of the law is likely to raise. First, the process of determining whether employers are engaged in “substantive illegal activities” raises due process concerns.¹⁶ In another lawsuit against the final rule filed by a coalition of nonprofits, they allege the rule violates due process because it is vague and lacks evidentiary standards.¹⁷ Commenters on the proposed final rule also raised concerns about the lack of procedural safeguards, a formal hearing, or a meaningful opportunity to appeal decisions to a neutral adjudicator.¹⁸ Second, there are substantial First Amendment concerns raised, as the nonprofits allege the rule provides no explanation for which aspects of speech and expressive conduct will be “swept up” into the definition of “substantially illegal purpose,” creating a chilling effect on their free speech.¹⁹

While the outcome of the cases remains unclear, the impact a restriction on PSLF access could have on the public service sector and state governments is a serious concern. A study on the efficacy of the PSLF program suggests that it significantly increased employment in the nonprofit sector, and significantly boosted their effectiveness at achieving their missions.²⁰ Another study found that PSLF, across all sectors, delivered huge cost-saving financial benefits by “delivering \$302 billion in recruitment value for \$10-15 billion in annual investment....”²¹ With benefits this significant, any organization losing eligibility could seriously threaten its ability to maintain talent and fulfill its mission. This threat is especially broad, considering the coalition of states in *Massachusetts* argues the new ED rule is intended to target governments of disfavored states by stripping them of PSLF eligibility.²²

¹⁵ Kristin E. Hickman, *Anticipating A New Modern Skidmore Standard*, 74 DUKE L.J. 111, 132–134 (2025) (arguing that it is unclear how courts will determine if the agency is acting within congressionally delegated policymaking authority or merely interpreting statutory language); Blumenthal et al., *supra* note 4 (arguing *Loper Bright* suggests courts will exercise their own interpretations of ambiguous statutory language).

¹⁶ *Public Servants Deserve What They Were Promised*, ROB BONTA ATT’Y GEN. (Nov. 3, 2025), <https://oag.ca.gov/news/press-releases/public-servants-deserve-what-they-were-promised-attorney-general-bonta-sues>.

¹⁷ Compl. ¶¶ 55–60, *Robert F. Kennedy Ctr. for Just. and Hum. Rts. v. McMahon*, No. 25-3860, (D.D.C. filed Nov. 4, 2025)

¹⁸ William D. Ford Federal Direct Loan, 90 Fed. Reg. at 48976–78 (Oct. 31, 2025) (amending 34 C.F.R. § 685.219).

¹⁹ Compl. ¶¶ 61–65, *Robert F. Kennedy Ctr. for Just. and Hum. Rts. v. McMahon*, No. 25-3860, (D.D.C. filed Nov. 4, 2025).

²⁰ *Study: Benefits of Public Service Loan Forgiveness Outweigh Costs*, NEWSWIRES (Sept. 23, 2024) https://www.eiinews.com/pr_news/745177582/study-benefits-of-public-service-loan-forgiveness-program-outweigh-costs.

²¹ LAUREL TAYLOR, ECONOMIC ANALYSIS: THE COST-EFFECTIVENESS OF PUBLIC SERVICE LOAN FORGIVENESS (PSLF) (June 29, 2025), <https://www.ed.gov/media/document/candidly-economic-analysis-cost-effectiveness-of-pslf-submitted-laurel-taylor-110311.pdf>.

²² Julie Manganis, *New Loan Forgiveness Rule Targets Trump Critics, States Say*, LAW360 (Nov. 3, 2025) <https://www.law360.com/articles/2406834/new-loan-forgiveness-rule-targets-trump-critics-states-say>; Compl. ¶ 3, *Massachusetts v. U.S. Dep’t of Educ.*, No. 1:25-cv-13244 (D. Mass. filed Nov. 3, 2025).

Legal aid is a good example of how restrictions on PSLF can cause serious ripple effects and, in this case, grow legal deserts and further restrict access to crucial legal services.²³ In 2021, 53.7 million Americans qualified for Legal aid. Yet, according to the Legal Services Corporation's Justice Gap Report, “[l]ow-income Americans do not get any or enough legal help for 92% of their substantive legal problems.”²⁴ A survey on the impact of PSLF in the legal system found that 51% of respondents would likely, or certainly, not have taken their current job without PSLF, and 54% said they would likely leave their job if PSLF was eliminated.²⁵ The survey further found that increased competitiveness of the jobs increased the quality of legal assistance.²⁶ Thus, any legal aid organization that has its eligibility revoked is likely to face serious challenges in recruiting and maintaining staff, which would negatively impact its ability to provide quality legal services for its clients. A PSLF restriction would have a wide-reaching, rippling effect, negatively impacting public service jobs beyond the legal profession, including physicians who believe the new rule will jeopardize access to medical care.²⁷

While the fate of PSLF remains unknown, evidence suggests that any restriction on PSLF is only likely to cause harm and unlikely to improve the administration of the PSLF program as the final rule claims.²⁸ With the breadth of constitutional challenges and the potential significant negative impact of the new rule on public service in mind, it seems prudent not to allow such a consequential change to the functioning of PSLF without a thorough consideration of its constitutionality. For now, the plaintiffs and all those who rely on PSLF will await the government's response to the suits and hope their eligibility will remain unthreatened.

²³ *How PSLF Works: A Lifeline for Legal Professionals in Public Service*, ABA (Aug. 25, 2025), https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/legaleducation/pslf-homepage/how-pslf-works.

²⁴ LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (Apr. 2022) at 7, <https://lsc-live.box.com/s/xl2v2uraiotbbzrhwtjlgi0emp3myz1>.

²⁵ NAT'L LEGAL AID & DEF. ASS'N, PUBLIC SERVICE LOAN FORGIVENESS AND THE JUSTICE SYSTEM (2018) AT 14, <https://www.nlada.org/sites/default/files/PSLF%20and%20the%20Justice%20System.pdf>.

²⁶ *Id* at 12.

²⁷ Group of Six, *Leading physician groups: Department of Educations PSLF rule will hurt patients and physicians*, AM. OSTEOPATHIC ASS'N, (Oct. 30, 2025), <https://osteopathic.org/2025/10/30/leading-physician-groups-department-of-educations-pslf-rule-will-hurt-patients-and-physicians/>.

²⁸ William D. Ford Federal Direct Loan, 90 Fed. Reg. 48966, 48967–8 (Oct. 31, 2025) amending 34 C.F.R. § 685.219).